

FILED  
STATE OF ALASKA  
APPELLATE COURTS

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

2021 OCT -8 AM 8:37

ADAM PHILLIP IVES

CLERK APPELLATE COURT

Appellant,

BY \_\_\_\_\_  
DEPUTY CLERK

v.

Court of Appeals No. A-13900

STATE OF ALASKA,

*FC Ci 10-8-21 gm*

Appellee.

Trial Case No. 3AN-21-06756CR

### NOTICE AND MEMORANDUM

#### VRA AND APP. R. 513.5 CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court. I further certify, pursuant to App. R. 513.5, that the font used in this document is Arial 12.5 point.

Adam Ives gives notice that he anticipates release from custody following the district court's October 7, 2021, order setting bail at \$1000 cash performance bond and house arrest with electronic monitoring. [Att. A].

Ives nonetheless asks the court to issue a decision on the merits of his September 27, 2021, bail appeal because the bail appeal is not moot or, if moot, subject to an exception to the mootness doctrine.

#### A. Facts

On October 7, 2021, Ives came before the district court for a scheduled Fugitive From Justice status hearing. Ives argued that the court's previous orders committing him on \$150,000 cash appearance bond and a third-party custodian would shortly expire under AS 12.70.140, and that the court was obligated to consider either discharge or release on bail anew under AS 12.70.160. The State

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2 opposed, arguing that the hearing was not a bail review and that there was no  
3 change in circumstances to justify a reduction in previously ordered bail. Ives argued  
4 that bail in an amount no greater than \$1000 cash appearance and house arrest with  
5 electronic monitoring was sufficient to secure his appearance and performance, and  
6 presented witness testimony about his finances and ties to Alaska. Ives noted his  
7 prior appearance at all hearings in 3AN-20-457CR, alleging the same conduct as the  
8 current fugitive complaint, on \$100 cash appearance bond and electronic monitoring  
9 by the pre-trial enforcement division.  
10

11  
12 The district court set bail at \$1000 cash performance bond and house arrest  
13 with electronic monitoring by Alaska Defendant Monitoring.

## 14 B. Argument

### 15 1. Ives' Bail Appeal Is Not Moot.

16  
17 "A claim is moot where a decision on the issue is no longer relevant to  
18 resolving the litigation, or where it has lost its character as a present, live  
19 controversy, that is, where a party bringing the action would not be entitled to any  
20 relief even if he or she prevailed."<sup>1</sup> In his bail appeal, Ives argued that he should  
21 have been released on his own recognizance because he had previously been  
22 discharged under AS 12.70.160 after being on bail for the maximum allowable  
23 period. Ives also argued that his prior appearance at in all hearings in case 3AN-20-  
24 457CR on \$100 cash appearance bond and the lack of any subsequent criminal  
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28 <sup>1</sup> *Clark v. State, Dept. of Corrections*, 156 P.3d 384, 386 (Alaska 2007).

1  
2 history demonstrated that more restrictive conditions were not reasonably necessary  
3 to assure his appearance.

4 Ives is now being released on the requirement that he post \$1000 cash  
5 performance bond and be subject to house arrest with electronic monitoring. This is  
6 not the relief Ives originally requested, and the court can still provide relief by  
7 directing that the district court release him on his own recognizance, or on conditions  
8 no more restrictive than his 2020 conditions. The court's decision on the merits can  
9 also provide guidance to the district court if Ives seeks to pursue a further reduction  
10 in bail in the district court.

## 11 12 13 **2. Even if Moot, the Public Interest Exception Applies.**

14 This court will hear an otherwise moot case that falls under the public interest  
15 exception to mootness.<sup>2</sup> The public interest exception applies where: 1) the disputed  
16 issues are capable of repetition, 2) application of the mootness doctrine will  
17 repeatedly circumvent judicial review of the issues, and 3) the issues are of important  
18 public interest.

### 19 20 **a. The Issues Are Capable of Repetition.**

21 Ives is held pending the posting of monetary bail because the State is making  
22 a second attempt to extradite him, after he was previously discharged under AS  
23 12.70.160. This situation is not unique; multiple attempts at extradition for the same  
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28 <sup>2</sup> *Id.* at 387.

conduct, initiated after the expiration of the maximum period allowed for detention without a governor's warrant, are common.<sup>3</sup>

**b. Application of the Mootness Doctrine Will Cause the Issue Raised in Ives' Bail Appeal To Repeatedly Circumvent Review.**

Alaska Statute 12.70.140 provides that a judge "shall" commit a person accused of being a fugitive from justice for no more than 30 days, or take bail for the person's future appearance. Once a commitment order under AS 12.70.140 expires, AS 12.70.160 provides that the accused may be discharged, or committed subject to bail for an additional period of no more than 60 days. The supreme court of Alaska has stated, in the context of civil commitments, that "it is quite unlikely that an appeal from a 30-day or 90-day commitment, or even a 180-day commitment, could be completed before the commitment has expired." This is even more true of an order setting bail under Alaska Statutes 12.70.140 or 12.70.160 because the defendant will not typically have the opportunity to meaningfully litigate bail at the district court level until some time after the commencement of the 30-day period under AS 12.70.140.<sup>4</sup>

**c. The Issues Are of Important Public Interest.**

The issues in this case are among the most significant that courts can consider. "The Eighth Amendment's excessive bail provision is integral to our concept

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<sup>3</sup> Cf., e.g. *Laverty v. State*, 963 P.2d 1076 (Alaska App. 1998); *In re Russell*, 524 P.2d 1295, 1297 (Cal. 1974); *Garcia v. Cooper*, 711 P.2d 1255, 1257 (Colo. 1986); *Murphy v. Boehm*, 443 So.2d 363, 364 (Fla. Dist. App. 1983).

<sup>4</sup> See *Torgerson v. State*, 444 P.3d 235, 237-238 (Alaska App. 2018).

1  
2 of ordered liberty [.]”<sup>5</sup> Though Ives is alleged to have violated the terms of his  
3 community custody in Washington, his liberty interest in due process remains  
4 significant, as the United States Supreme Court explained in *Morrissey v. Brewer*.<sup>6</sup>  
5

6 We see, therefore, that the liberty of a parolee, although indeterminate,  
7 includes many of the core values of unqualified liberty and its  
8 termination inflicts a ‘grievous loss’ on the parolee and often on others.  
9 It is hardly useful any longer to try to deal with this problem in terms of  
10 whether the parolee’s liberty is a ‘right’ or a ‘privilege.’ By whatever  
11 name, the liberty is valuable and must be seen as within the protection  
12 of the Fourteenth Amendment.<sup>7</sup>

13 Nothing in the district court’s decision suggests a distinction between a person  
14 alleged to have fled probation or parole, as opposed to a person pending trial in  
15 another state, and the applicable statutes make no distinction in the procedural  
16 rights afforded individuals awaiting extradition based on whether they are alleged to  
17 be charged or convicted of a crime.<sup>8</sup>

### 18 C. Conclusion

19 For the reasons stated above, this court should decide Ives’ appeal  
20 on its merits.  
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26 <sup>5</sup> *Meechaicum v. Fountain*, 696 F.2d 790, 791 (Alaska 1983).

27 <sup>6</sup> 408 U.S. 471 (1972).

28 <sup>7</sup> *Id.* at 482.

<sup>8</sup> AS 12.70.140-160; AS 12.30.006(2); AS 12.30.011(d)(E).

Alaska Public Defender Agency  
Tristan Bordon • tristan.bordon@alaska.gov  
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Phone: (907) 269-4797 • Fax: (907) 269-5476  
Service: pdaanccrim@alaska.gov

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DATE 10/7/2021

ALASKA PUBLIC DEFENDER AGENCY

  
\_\_\_\_\_  
TRISTAN BORDON (1312111)  
ASSISTANT PUBLIC DEFENDER

Alaska Public Defender Agency  
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CLERK APPELLATE COURT

BY \_\_\_\_\_  
DEPUTY CLERK

Court of Appeals No. A-13900

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ADAM PHILLIP IVES

Appellant,

v.

STATE OF ALASKA,

Appellee.

Trial Case No. 3AN-21-06756CR

AFFIDAVIT OF COUNSEL

VRA AND APP. R. 513.5 CERTIFICATION

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STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss

Tristan Bordon swears:

1. I am the attorney assigned to represent the appellant in the above-entitled case and the related district court case, 3AN-21-06756.

2. The facts set forth in the preceding notice and memorandum are true and correct to the best of my knowledge.



TRISTAN BORDON (1312111)  
ASSISTANT PUBLIC DEFENDER

Subscribed and sworn to before me on: \_\_\_\_\_



Marissa Lynn Citro

Alaska Public Defender Agency  
Tristan Bordon • tristan.bordon@alaska.gov  
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Phone: (907) 269-4797 • Fax: (907) 269-5476  
Service: pdaancrim@alaska.gov

Mauger 10/7/21  
Notary Public in Alaska w/0  
Commission expires with office

I certify that on October 8, 2021 a copy of this document and its attachments was emailed to: DAO  
By: SB



## IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA, AT ANCHORAGE

State of Alaska vs. Adam Phillip Ives

CASE NO: 3AN-21-06756CR

DL/ID: 7825917 ST: AK

DOB: 10/26/1985

ATN: 117704502

APSIN: 7291603

☐ TF-980 to Victim

Original Charge(s): 001: AS12.70.120: Arrest Prior To Requisition (Fugitive from Justice)

Amended Charge(s):

LOC <u>Anchorage Jail Courtroom</u> LOG # <u>90645/91750</u> DATE <u>10/07/2021</u> TIME <u>8:30 am</u>	<u>Hanley</u> Judicial Officer <u>T Jones</u> Clerk Status Hearing: District Court (In Custody)	<u>Nobrega</u> Present for State/MOA <u>Borden</u> Present for Defendant DEFENDANT: <input type="checkbox"/> Veteran <input checked="" type="checkbox"/> Present <input type="checkbox"/> Not Present <input checked="" type="checkbox"/> In-Custody <input type="checkbox"/> Not In Custody	RIGHTS BY: <input type="checkbox"/> Video <input type="checkbox"/> Court FINGERPRINTS: <input type="checkbox"/> Taken <input type="checkbox"/> Ordered CRIMINAL RULE 39: <input type="checkbox"/> \$200 <input type="checkbox"/> \$250 <input type="checkbox"/> Other <input type="checkbox"/> No PED report received
PRE SET BAIL: <u>\$150,000 C/A + TPC + PED w/ EM</u> <input checked="" type="checkbox"/> SET <input type="checkbox"/> CONT'D <input type="checkbox"/> EXONERATED <input type="checkbox"/> FORFEITED <input type="checkbox"/> REINSTATED <input type="checkbox"/> PED SUPERVISION <input type="checkbox"/> concludes now. <input type="checkbox"/> continues until remand. PLEA: <input type="checkbox"/> Not Guilty, CTN <input type="checkbox"/> Guilty, CTN <input type="checkbox"/> No Contest, CTN <input type="checkbox"/> Dismiss Per R.: <input type="checkbox"/> 5 <input type="checkbox"/> 43(a)(1) <input type="checkbox"/> 43(a)(2) <input type="checkbox"/> 43(b)(2) <input type="checkbox"/> CTN PETITION TO REVOKE PROBATION: <input type="checkbox"/> Admit <input type="checkbox"/> Deny CR R 5 & 45: <input type="checkbox"/> Runs <input type="checkbox"/> Tolled <input type="checkbox"/> Days Run _____ From _____ to _____		<input type="checkbox"/> COUNSEL APPOINTED The attorney appointed to represent you is: <input type="checkbox"/> Public Defender <input type="checkbox"/> Office of Public Advocacy <input type="checkbox"/> Denali Law Group <input type="checkbox"/> _____ <b>**More attorney instructions on handout.**</b>	
<u>FFJ status</u> <u>SOA requesting 30 day status continuance</u> <u>CR sets status 11/5/21</u> <u>Defense req bail modification + ADM monitoring</u> <u>SOA: opposed</u> <u>Ms. Parks sworn in (Adrianna Parks)</u> <u>Andrea Hamby sworn in (from ADM)</u> <u>SOA: opposed; no presumption of innocence</u> <u>CR sets \$10000/p + ADM monitoring</u> <u>Δ is to be in person @ next hearing 11/5/21</u>		<b>CONDITIONS OF RELEASE: Effective immediately, defendant to obey below conditions:</b> <input checked="" type="checkbox"/> Obey all laws; attend all hearings. <input checked="" type="checkbox"/> Maintain contact with PED officer, if any, and follow all PED officer instructions. <input checked="" type="checkbox"/> Maintain contact with attorney. <input checked="" type="checkbox"/> Notify attorney, or PED officer, or court w/in 24 hrs if change residence. <input checked="" type="checkbox"/> Notify attorney, or PED officer, or court of new phone or email address by next business day. <input type="checkbox"/> Do not leave _____ w/o ct permission <input type="checkbox"/> Do not drive without a valid operator's license, registration, and insurance. <input type="checkbox"/> No alcohol, illegal drugs, bars, liquor stores <input type="checkbox"/> Be tested <input type="checkbox"/> per PED or <input type="checkbox"/> _____ <input type="checkbox"/> No direct or indirect contact w/ _____ <input type="checkbox"/> Do not return to: _____ <input type="checkbox"/> Not possess firearms or ammunition	
<b>THESE ARE YOUR NEXT COURT DATES.</b> You must appear at all hearings listed below unless your attorney notifies you that you do not need to be present. A warrant for your arrest will be issued if you fail to appear for any hearing.			
Type of Hearing	Date & Time	Type of Hearing	Date & Time
Arraignment	<u>FFJ status 11/5/21 @ 8:30 am</u>	Representation Hearing	
Adjudication / Disposition		Trial Call / Trial	
<u>Bail?</u> Change of Plea / Sentencing	<u>PS 10/8/21 @ 8:30 am</u>	Wellness / Veteran / CRP	
Pre-Indictment / Pretrial Conference	<u>vacate</u>	Report to Jail / Remand	

## TEMPORARY ORDER: INSTRUCTIONS TO JAIL

- ☐ Defendant is NOT in custody on this charge
- ☒ COMMITMENT. It is ordered that the above-named defendant be held in custody:
- ☐ pending action by this court or until bail is posted as previously ordered.
- ☒ pending action by this court or until bail is posted in the amount of \$ 1000 a/perf + ADM monitoring
- ☐ CRC W/PASSES ☐ CONCURRENT WITH ☐ TPC
- ☐ pending receipt of formal judgment. Defendant was sentenced as follows: delete TPC
- ☐ RELEASE. This is your authority to release the defendant
- ☐ TRANSPORTATION or ☐ OTHER INSTRUCTIONS: \_\_\_\_\_

Judicial Officer L. HanleyDate 10/7/21

## IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE

State of Alaska vs. Defendant: Adam Phillip Ives  
ATN: 117704502 DL/ID: 7825917 ST: AKDOB: 10/26/1985CASE NO: 3AN-21-06756CRAPSIN ID: 7291603☐ Victim (if known) ☐ No PED report

## ORDER AND CONDITIONS OF RELEASE

IT IS ORDERED that effective now, defendant be released under the conditions marked below:

☐ OWN RECOGNIZANCE.☒ BONDS. Defendant to get the following bonds:

Offenses before 7/9/2019:

☐ Appearance: \$ \_\_\_\_\_ ☐ unsecured ☐ 10% cash ☐ 100% cash ☐ 100% cash or bail bond☐ Performance: \$ \_\_\_\_\_ ☐ unsecured ☐ \_\_\_\_\_☐ [If Monetary Bail] The court finds by clear and convincing evidence that own recognizance release, or unsecured bonds, or nonmonetary conditions will not ensure the defendant's appearance, or the safety of the victim, other persons, or the community.

Offenses on or after 7/9/2019:

☐ Appearance: \$ \_\_\_\_\_ ☐ unsecured ☐ 10% cash ☐ 100% cash ☐ 100% cash or bail bond☒ Performance: \$ 1000 100% cash

- ☒ Obey all court orders and all federal, state, and local laws. Appear in court when ordered.
- ☒ Maintain contact with your lawyer, if represented. Defendant's contact phone number is \_\_\_\_\_.
- ☒ Tell your lawyer or court within 24 hours after changing residences.
- ☐ Do not leave ☐ Alaska ☐ \_\_\_\_\_ without court permission.
- ☐ Have no direct or indirect contact with \_\_\_\_\_ at any time, including while defendant is in jail.
- ☐ Stay away at least \_\_\_\_\_ feet from ☐ the residence ☐ the workplace of \_\_\_\_\_
- ☐ Stay away from \_\_\_\_\_
- ☐ Do not drive without a valid driver's license, registration, and insurance.
- ☐ Do not possess firearms or ammunition.
- ☐ Do not possess or consume ☐ alcohol ☐ illegal drugs. Do not enter any bars or liquor stores.
- ☐ ADM Supervision, no EM required. Report to ADM office by 10 a.m. the next business day.
- ☐ ADM Supervision, testing at ADM office for ☐ alcohol, up to \_\_\_\_\_ times per week, ☐ illegal drugs, up to \_\_\_\_\_ times per week.
- ☐ ADM Supervision, alcohol monitoring: ☐ portable breath testing ☐ transdermal testing
- ☒ ADM Supervision, location monitoring:
- ☒ House arrest ☐ 24 hours per day ☒ from 8 a.m./p.m. to 7 a.m./p.m. at a residence determined by ADM. Passes allowed for emergency medical and court/lawyer; other allowed passes: ☒ work ☐ treatment ☐ other passes at ADM discretion. All passes to be verified by ADM.
- ☐ Exclusion zone: ADM to enforce the "stay away" orders above.
- ☒ Mobile monitoring: ADM to monitor the defendant's location at all times by GPS.
- ☒ Follow all ADM officer instructions, and maintain contact with ADM officer. The PED office is at 640 E. Ship Creek Avenue, Suite 249, Anchorage, AK 99501. Phone number: 853-500-5096.
- ☒ ADM can enter defendant's residence to verify/maintain monitoring equip.; defendant is to remain in custody until monitor is given.
- ☐ Testing by 24/7 program at defendant's expense for ☐ alcohol \_\_\_\_\_ times per day, ☐ illegal drugs \_\_\_\_\_ times per week.
- ☐ Third Party Custodian. Defendant placed in custody of: \_\_\_\_\_
- Defendant shall remain in custody until a completed and signed CR-224 form is provided to DOC.
- ☒ ADM must confirm daily work schedule
- ☒ Passes to meet w/ lawyer

NEXT COURT HEARING. Date: 11/5/21 Time: 8:30am City: ANCHORAGE10/7/21

Effective Date

Judicial Officer

**AGREEMENT BY DEFENDANT.** I read and understand the above conditions. I promise to appear at all hearings unless excused by the court, and comply with all these conditions. I understand that if I violate any of these conditions, I may be arrested without a warrant, and the court may enter a judgment against me for the amount of the bond posted and any unsecured bond.

Defendant's Signature	Residence Address	City	State	Zip
Home Phone _____	Work Phone _____	Cell Phone _____	Email Address _____	
I certify that on _____ a copy of this order was given to: Defendant, Prosecutor, Def's Attorney <input type="checkbox"/> ASAP <input type="checkbox"/> PED				
<input type="checkbox"/> Jail <input type="checkbox"/> _____ by Clerk: _____				

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

State of Alaska,

State of Alaska,

CASE NO: 3AN-21-06756CR

vs.

Adam Phillip Ives,

Defendant.

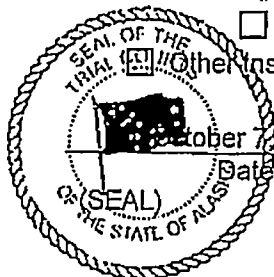
FUGITIVE FROM JUSTICE  
TEMPORARY ORDERDOB: 10/26/1985APSIN: 7291603 ATN: 117704502 DL/ID ST: 7825917 - AKDefendant is charged with being a fugitive from justice of the State of Washington.☒ The Governor's Warrant has not been served upon the defendant.

IT IS HEREBY ORDERED that the defendant is committed for a period not to exceed 30 days or until bail set herein has been posted in order to enable the arrest of the accused to be made under a warrant of the Governor of the State of Alaska.

☒ Bail is set/continued in the amount of \$ 1600 C/P + ADM maintenance☐ Defendant is not bailable because offense is punishable by death.☒ The defendant is ordered to appear in Court:Date: NOV 5, 2021 Time: 8:30 am Courtroom: Anchorage Jail CourtroomCourt Location: 1400 E 4th Ave Anchorage, AK 99501Type of Hearing: Bail Hearing: District Court (In Custody)☐ The Governor's Warrant from the Governor of the State of Alaska has been served upon the defendant.

IT IS HEREBY ORDERED that the defendant is allowed \_\_\_\_\_ days to file a petition for writ of habeas corpus to test the legality of the arrest under the Governor's Warrant.

IT IS FURTHER ORDERED that the defendant is committed pending further order of the court.

☐ Defendant is not bailable☐ Bail is set/continued at \$ \_\_\_\_\_☐ This is your authority to deliver the defendant to the authorized agent from the State of \_\_\_\_\_ because:☐ The defendant has waived extradition☐ No petition for a writ of habeas corpus has been filed.☐ The superior court has denied relief under the writ of habeas corpus.☐ Other Instructions: \_\_\_\_\_I certify that on 10/7/2021

a copy of this order was sent or given to:

☐ Def. Atty. \_\_\_\_\_☐ Defendant ☐ DA ☐ Jail ☐ JSClerk: T.Jones

Judge

Type or Print Name Hanley